

A-Engrossed
Senate Bill 416

Ordered by the Senate April 29
Including Senate Amendments dated April 29

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Authorizes court to impose probation with intensive supervision under certain circumstances when person is convicted of certain drug or property crimes.

Authorizes Oregon Criminal Justice Commission to make grants to counties in order to provide services to **certain** offenders sentenced to [*intensive*] **high-level** probation or **certain** offenders on parole or post-prison supervision [*determined to be at high risk to reoffend*].

Appropriates moneys from General Fund to commission for grants.

A BILL FOR AN ACT

1
2 Relating to crime; creating new provisions; amending ORS 137.656, 137.717, 423.150 and 475.933; and
3 appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 137.717, as amended by section 11, chapter 660, Oregon Laws 2009, is
6 amended to read:

7 137.717. (1) When a court sentences a person convicted of:

8 (a) Aggravated theft in the first degree under ORS 164.057, burglary in the first degree under
9 ORS 164.225, robbery in the third degree under ORS 164.395, identity theft under ORS 165.800 or
10 aggravated identity theft under ORS 165.803, the presumptive sentence is 24 months of
11 incarceration, unless the rules of the Oregon Criminal Justice Commission prescribe a longer
12 presumptive sentence, if the person has:

13 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, burglary
14 in the first degree under ORS 164.225, robbery in the third degree under ORS 164.395, robbery in
15 the second degree under ORS 164.405, robbery in the first degree under ORS 164.415 or aggravated
16 identity theft under ORS 165.803;

17 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
18 of this section; or

19 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
20 of conviction was committed while the defendant was on supervision for the previous conviction or
21 less than three years after the date the defendant completed the period of supervision for the pre-
22 vious conviction.

23 (b) Theft in the first degree under ORS 164.055, unauthorized use of a vehicle under ORS
24 164.135, mail theft or receipt of stolen mail under ORS 164.162, burglary in the second degree under
25 ORS 164.215, criminal mischief in the first degree under ORS 164.365, computer crime under ORS

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 164.377, forgery in the first degree under ORS 165.013, criminal possession of a forged instrument
2 in the first degree under ORS 165.022, fraudulent use of a credit card under ORS 165.055 (4)(b),
3 possession of a stolen vehicle under ORS 819.300 or trafficking in stolen vehicles under ORS 819.310,
4 the presumptive sentence is 18 months of incarceration, unless the rules of the Oregon Criminal
5 Justice Commission prescribe a longer presumptive sentence, if the person has:

6 (A) A previous conviction for aggravated theft in the first degree under ORS 164.057, unau-
7 thorized use of a vehicle under ORS 164.135, burglary in the first degree under ORS 164.225, robbery
8 in the third degree under ORS 164.395, robbery in the second degree under ORS 164.405, robbery in
9 the first degree under ORS 164.415, possession of a stolen vehicle under ORS 819.300, trafficking in
10 stolen vehicles under ORS 819.310 or aggravated identity theft under ORS 165.803;

11 (B) Two or more previous convictions for any combination of the crimes listed in subsection (2)
12 of this section; or

13 (C) A previous conviction for a crime listed in subsection (2) of this section, if the current crime
14 of conviction was committed while the defendant was on supervision for the previous conviction or
15 less than three years after the date the defendant completed the period of supervision for the pre-
16 vious conviction.

17 (2) The crimes to which subsection (1) of this section applies are:

- 18 (a) Theft in the second degree under ORS 164.045;
- 19 (b) Theft in the first degree under ORS 164.055;
- 20 (c) Aggravated theft in the first degree under ORS 164.057;
- 21 (d) Unauthorized use of a vehicle under ORS 164.135;
- 22 (e) Mail theft or receipt of stolen mail under ORS 164.162;
- 23 (f) Burglary in the second degree under ORS 164.215;
- 24 (g) Burglary in the first degree under ORS 164.225;
- 25 (h) Criminal mischief in the second degree under ORS 164.354;
- 26 (i) Criminal mischief in the first degree under ORS 164.365;
- 27 (j) Computer crime under ORS 164.377;
- 28 (k) Forgery in the second degree under ORS 165.007;
- 29 (L) Forgery in the first degree under ORS 165.013;
- 30 (m) Criminal possession of a forged instrument in the second degree under ORS 165.017;
- 31 (n) Criminal possession of a forged instrument in the first degree under ORS 165.022;
- 32 (o) Fraudulent use of a credit card under ORS 165.055;
- 33 (p) Identity theft under ORS 165.800;
- 34 (q) Possession of a stolen vehicle under ORS 819.300;
- 35 (r) Trafficking in stolen vehicles under ORS 819.310; and
- 36 (s) Any attempt to commit a crime listed in this subsection.

37 (3)(a) A presumptive sentence described in subsection (1) of this section shall be increased by
38 two months for each previous conviction the person has that:

39 (A) Was for any of the crimes listed in subsection (1) or (2) of this section; and

40 (B) Was not used as a predicate for the presumptive sentence described in subsection (1) of this
41 section.

42 (b) Previous convictions may not increase a presumptive sentence described in subsection (1)
43 of this section by more than 12 months under this subsection.

44 **(4)(a) The court may not impose a sentence described in this section if a longer term of**
45 **incarceration is otherwise required by law.**

1 [(4) (b) The court may impose a sentence other than *[the sentence provided by subsection (1) or*
2 *(3) of]* **a sentence described in** this section if the court imposes[:]

3 [(a) *A longer term of incarceration that is otherwise required or authorized by law; or]*

4 [(b) *A departure sentence authorized by the rules of the Oregon Criminal Justice Commission based*
5 *upon findings of substantial and compelling reasons.]* **a longer term of incarceration that is oth-**
6 **erwise authorized by law.** Unless the law or the rules of the Oregon Criminal Justice Commission
7 allow for imposition of a longer sentence, the maximum departure allowed for a person sentenced
8 under this *[subsection]* **paragraph** is double the presumptive sentence provided in subsection (1) or
9 (3) of this section.

10 [(5) *Notwithstanding subsection (4)(b) of this section, the court may not sentence a person under*
11 *subsection (4) of this section to a term of incarceration that exceeds the period of time described in ORS*
12 *161.605.]*

13 **(5)(a) The court shall sentence a person under this section to at least the presumptive**
14 **sentence described in subsection (1) or (3) of this section, unless the parties stipulate oth-**
15 **erwise or the court finds:**

16 **(A) That the person was not on probation for a felony, parole or post-prison supervision**
17 **at the time the current crime of conviction was committed;**

18 **(B) That the person has not been sentenced to probation as a downward dispositional**
19 **departure for any crime in the five-year period immediately preceding the commission of the**
20 **current crime of conviction;**

21 **(C) That a sentence of probation with a high level of supervision would better serve the**
22 **foundation principles of criminal law described in section 15, Article I of the Oregon Consti-**
23 **tution; and**

24 **(D) Substantial and compelling reasons exist to impose a sentence of probation with a**
25 **high level of supervision.**

26 **(b) When the court imposes a sentence of probation under this subsection, the supervi-**
27 **sory authority shall subject the person to a high level of supervision for at least 12 months.**
28 **The supervisory authority may extend the period of high-level supervision for all or part of**
29 **the remaining supervision term.**

30 **(c) This subsection does not apply to sentences imposed for:**

31 **(A) Burglary in the first degree as defined in ORS 164.225, if the offense is classified as**
32 **crime category 9 of the sentencing guidelines grid of the commission.**

33 **(B) Aggravated theft in the first degree, if the offense is committed under the circum-**
34 **stances described in ORS 164.061.**

35 **(C) Aggravated identity theft as defined in ORS 165.803, if a victim of the offense is 65**
36 **years of age or older at the time of the commission of the offense.**

37 **(6) When a person is sentenced for an offense described in subsection (5)(c) of this sec-**
38 **tion, the court shall sentence *[a person under this section]* the person to at least the presumptive**
39 **sentence described in subsection (1) or (3) of this section, unless the parties stipulate otherwise or**
40 **the court finds that:**

41 **(a) The person was not on probation, parole or post-prison supervision for a crime listed in**
42 **subsection (1) of this section at the time *[of the commission of]* the current crime of conviction **was**
43 **committed;****

44 **(b) The person has not previously received a downward departure from a presumptive sentence**
45 **for a crime listed in subsection (1) of this section;**

1 (c) The harm or loss caused by the crime is not greater than usual for that type of crime; and

2 (d) In consideration of the nature of the offense and the harm to the victim, a downward de-
3 parture will:

4 (A) Increase public safety;

5 (B) Enhance the likelihood that the person will be rehabilitated; and

6 (C) Not unduly reduce the appropriate punishment.

7 (7)(a) For a crime committed on or after November 1, 1989, a conviction is considered to have
8 occurred upon the pronouncement of sentence in open court. However, when sentences are imposed
9 for two or more convictions arising out of the same conduct or criminal episode, none of the con-
10 victions is considered to have occurred prior to any of the other convictions arising out of the same
11 conduct or criminal episode.

12 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
13 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
14 court of the suspended imposition of a sentence.

15 (8) For purposes of this section, previous convictions must be proven pursuant to ORS 137.079.

16 **(9) The court may not impose a sentence under this section that exceeds the period of**
17 **time described in ORS 161.605.**

18 [(9)] (10) As used in this section:

19 (a) "Downward departure" means a downward dispositional departure or a downward durational
20 departure under the rules of the Oregon Criminal Justice Commission.

21 (b) "Previous conviction" includes:

22 (A) Convictions occurring before, on or after July 1, 2003; and

23 (B) Convictions entered in any other state or federal court for comparable offenses.

24 **SECTION 2.** ORS 475.933 is amended to read:

25 475.933. (1) When a court sentences a person convicted of a crime listed in subsection [(2)] (4)
26 of this section **who has a previous conviction for a crime listed in subsection (4) of this**
27 **section**, the court may not impose a sentence of optional probation or grant a downward disposi-
28 tional departure or a downward durational departure under the rules of the Oregon Criminal Justice
29 Commission [*if the person has a previous conviction for any of the crimes listed in subsection (2) of this*
30 *section.*] **unless the court finds:**

31 **(a) That the person was not on probation for a felony, parole or post-prison supervision**
32 **at the time the current crime of conviction was committed;**

33 **(b) That the person has not been sentenced to probation as a downward dispositional**
34 **departure for any crime in the five-year period immediately preceding the commission of the**
35 **current crime of conviction;**

36 **(c) That a sentence of probation with a high level of supervision would better serve the**
37 **foundation principles of criminal law described in section 15, Article I of the Oregon Consti-**
38 **tution; and**

39 **(d) Substantial and compelling reasons exist to impose a sentence of probation with a**
40 **high level of supervision.**

41 **(2) When the court imposes a sentence of probation under subsection (1) of this section,**
42 **the supervisory authority shall subject the person to a high level of supervision for at least**
43 **12 months. The supervisory authority may extend the period of high-level supervision for all**
44 **or part of the remaining supervision term.**

45 **(3) Notwithstanding subsection (1) of this section, the court shall impose at least the**

1 **presumptive sentence provided by law when a person is sentenced for:**

2 (a) **The unlawful delivery of methamphetamine to a minor under ORS 475.890 (3) or**
3 **475.907; or**

4 (b) **The unlawful delivery or manufacture of a controlled substance in an amount de-**
5 **scribed in ORS 475.925.**

6 [(2)] (4) The crimes to which subsection (1) of this section applies are:

7 (a) Manufacture or delivery of a controlled substance, other than marijuana, under ORS 475.840
8 (1);

9 (b) Creation or delivery of a counterfeit substance, other than marijuana, under ORS 475.840 (2);

10 (c) Manufacture or delivery of heroin under ORS 475.846, 475.848, 475.850 or 475.852;

11 (d) Manufacture or delivery of 3,4-methylenedioxymethamphetamine under ORS 475.866, 475.868,
12 475.870 or 475.872;

13 (e) Manufacture or delivery of cocaine under ORS 475.876, 475.878, 475.880 or 475.882;

14 (f) Manufacture or delivery of methamphetamine under ORS 475.886, 475.888, 475.890 or 475.892;

15 (g) Manufacture or delivery of a controlled substance within 1,000 feet of a school under ORS
16 475.904;

17 (h) Delivery of a controlled substance to a person under 18 years of age under ORS 475.906; and

18 (i) Possession of a precursor substance with intent to manufacture a controlled substance under
19 ORS 475.967.

20 [(3)(a)] (5)(a) For a crime committed on or after November 1, 1989, a conviction is considered
21 to have occurred upon the pronouncement in open court of sentence. However, when sentences are
22 imposed for two or more convictions arising out of the same conduct or criminal episode, none of
23 the convictions is considered to have occurred prior to any of the other convictions arising out of
24 the same conduct or criminal episode.

25 (b) For a crime committed prior to November 1, 1989, a conviction is considered to have oc-
26 curred upon the pronouncement in open court of a sentence or upon the pronouncement in open
27 court of the suspended imposition of a sentence.

28 [(4)] (6) For purposes of this section, previous convictions must be proven pursuant to ORS
29 137.079.

30 [(5)] (7) As used in this section, "previous conviction" means:

31 (a) Convictions occurring before, on or after July 1, 2009; and

32 (b) Convictions entered in any other state or federal court for comparable offenses.

33 **SECTION 3. There is appropriated to the Oregon Criminal Justice Commission for the**
34 **biennium beginning July 1, 2011, out of the General Fund, the amount of \$_____ for the**
35 **purpose of carrying out the provisions of section 4 of this 2011 Act.**

36 **SECTION 4. (1) A county is eligible for a grant under ORS 137.656 (5)(b) if the county, in**
37 **accordance with rules adopted by the Oregon Criminal Justice Commission, is able to dem-**
38 **onstrate a current or future ability to provide, at a readily accessible location or by**
39 **streamlined referral, assistance to offenders who have supervision-related service needs and**
40 **are serving a term of:**

41 (a) **Probation imposed under ORS 137.717 (5) or 475.933 (1);**

42 (b) **Probation imposed for an eligible offense, provided that the sentence was imposed as**
43 **a sentence of optional probation or a downward dispositional departure from a presumptive**
44 **sentence, under the rules of the Oregon Criminal Justice Commission; or**

45 (c) **Post-prison supervision imposed for an eligible offense.**

1 **(2) An award of grant moneys under this section must be used to pay the cost of a**
2 **supervision-related service or to reimburse a service provider for the provision of the**
3 **supervision-related service.**

4 **(3)(a) The Oregon Criminal Justice Commission shall annually:**

5 **(A) Contract with a qualified independent person or organization to conduct a scientif-**
6 **ically valid evaluation of the grant program described in this section to determine whether**
7 **the grant program is effective in reducing recidivism; and**

8 **(B) Conduct an audit of the grant program described in this section to ensure that the**
9 **grant moneys are awarded solely for the purposes described in this section.**

10 **(b) All state agencies and persons providing or receiving supervision-related services**
11 **shall cooperate fully in the evaluation and audit described in this subsection.**

12 **(c) No later than January 31 of each year, the commission shall report to the Legislative**
13 **Assembly on the results of the evaluation and audit.**

14 **(4) As used in this section:**

15 **(a) “Eligible offense” means:**

16 **(A) Felon in possession of a firearm or felon in possession of a restricted weapon, under**
17 **ORS 166.270.**

18 **(B) Assault in the third degree under ORS 163.165.**

19 **(C) Criminal driving while suspended or revoked under ORS 811.182.**

20 **(D) Failure to report as a sex offender under ORS 181.599.**

21 **(E) Failure to appear in the first degree under ORS 162.205.**

22 **(F) Escape in the second degree under ORS 162.155.**

23 **(G) Fleeing or attempting to elude a police officer under ORS 811.540.**

24 **(H) Perjury under ORS 162.065.**

25 **(I) Aggravated harassment under ORS 166.070.**

26 **(J) Laundering a monetary instrument under ORS 164.170.**

27 **(K) Making a false claim for health care payment under ORS 165.692.**

28 **(L) The possession, delivery or manufacture of a controlled substance, for which the law**
29 **authorizes a sentence of probation.**

30 **(b) “Supervision-related service” means any of the following:**

31 **(A) Alcohol and drug assessment and treatment;**

32 **(B) Obtaining food and clothing, appropriate housing or state identification;**

33 **(C) Obtaining employment;**

34 **(D) Transportation;**

35 **(E) Benefits application assistance;**

36 **(F) Case management, including obtaining parole and probation officer contacts;**

37 **(G) Family and community support;**

38 **(H) Medical, dental and mental health evaluation and referral;**

39 **(I) Cognitive behavioral therapy;**

40 **(J) Financial and computer training;**

41 **(K) Referrals for faith-based mentoring or self-improvement;**

42 **(L) Legal consultation; or**

43 **(M) Education and training programs.**

44 **SECTION 5. ORS 137.656 is amended to read:**

45 137.656. (1) The purpose of the Oregon Criminal Justice Commission is to improve the effec-

1 tiveness and efficiency of state and local criminal justice systems by providing a centralized and
2 impartial forum for statewide policy development and planning.

3 (2) The primary duty of the commission is to develop and maintain a state criminal justice policy
4 and comprehensive, long-range plan for a coordinated state criminal justice system that encompasses
5 public safety, offender accountability, crime reduction and prevention and offender treatment and
6 rehabilitation. The plan must include, but need not be limited to, recommendations regarding:

7 (a) Capacity, utilization and type of state and local prison and jail facilities;

8 (b) Implementation of community corrections programs;

9 (c) Alternatives to the use of prison and jail facilities;

10 (d) Appropriate use of existing facilities and programs;

11 (e) Whether additional or different facilities and programs are necessary;

12 (f) Methods of assessing the effectiveness of juvenile and adult correctional programs, devices
13 and sanctions in reducing future criminal conduct by juvenile and adult offenders;

14 (g) Methods of reducing the risk of future criminal conduct; and

15 (h) The effective utilization of local public safety coordinating councils.

16 (3) Other duties of the commission are:

17 (a) To conduct joint studies by agreement with other state agencies, boards or commissions on
18 any matter within the jurisdiction of the commission.

19 (b) To provide Oregon criminal justice analytical and statistical information to federal agencies
20 and serve as a clearinghouse and information center for the collection, preparation, analysis and
21 dissemination of information on state and local sentencing practices.

22 (c) To provide technical assistance and support to local public safety coordinating councils.

23 (d) To receive grant applications to start or expand drug court programs as defined in ORS
24 3.450, to make rules to govern the grant process and to award grant funds according to the rules.

25 (4) The commission shall establish by rule the information that must be submitted under ORS
26 137.010 (9) and the methods for submitting the information. A rule adopted under this subsection
27 must be approved by the Chief Justice of the Supreme Court before it takes effect.

28 **(5) The commission shall, from funds appropriated to the commission for that purpose,
29 make grants to counties for the purpose of:**

30 **(a) Providing supplemental funding for drug courts for drug-addicted persons, as defined
31 in ORS 423.150, including the costs of appropriate treatment services and the incarceration
32 of persons who have violated the terms and conditions of a drug court; and**

33 **(b) Providing offenders with supervision-related services as defined in section 4 of this
34 2011 Act.**

35 [(5)] (6) The commission may:

36 (a) Apply for and receive gifts and grants from any public or private source.

37 (b) Award grants from funds appropriated by the Legislative Assembly to the commission or
38 from funds otherwise available from any other source, for the purpose of carrying out the duties of
39 the commission.

40 (c) Adopt rules to carry out the provisions of this subsection.

41 **SECTION 6.** ORS 423.150 is amended to read:

42 423.150. (1) The Department of Corrections shall:

43 (a) Provide appropriate treatment services to drug-addicted persons in the custody of the de-
44 partment who are at a high or medium risk of reoffending and who have moderate to severe treat-
45 ment needs; and

1 (b) Make grants to counties in order to provide supplemental funding for:

2 (A) The operation of local jails;

3 (B) Appropriate treatment services for drug-addicted persons on probation, parole or post-prison
4 supervision; or

5 (C) The intensive supervision of drug-addicted persons on probation, parole or post-prison
6 supervision, including the incarceration of drug-addicted persons who have violated the terms and
7 conditions of probation, parole or post-prison supervision.

8 *[(2) The Oregon Criminal Justice Commission shall make grants to counties in order to provide
9 supplemental funding for drug courts for drug-addicted persons, including the costs of appropriate
10 treatment services and the incarceration of persons who have violated the terms and conditions of a
11 drug court.]*

12 *[(3)(a)] (2)(a)* The appropriate legislative committee shall periodically conduct oversight hearings
13 on the effectiveness of this section.

14 (b) The Oregon Criminal Justice Commission shall periodically conduct independent evaluations
15 of the programs funded by this section for their effectiveness in reducing criminal behavior in a
16 cost-effective manner.

17 *[(4)] (3)* The Department of Corrections shall determine which persons are eligible for treatment
18 under subsection (1)(a) of this section using an actuarial risk assessment tool.

19 *[(5)] (4)* The department shall adopt rules to administer the grant program described in sub-
20 section (1)(b) of this section.

21 *[(6)] (5)* Prior to adopting the rules described in subsection *[(5)] (4)* of this section, the depart-
22 ment shall consult with a broad-based committee that includes representatives of:

23 (a) County boards of commissioners;

24 (b) County sheriffs;

25 (c) District attorneys;

26 (d) County community corrections;

27 (e) The Oregon Criminal Justice Commission;

28 (f) Presiding judges of the judicial districts of this state;

29 (g) Public defenders; and

30 (h) Treatment providers.

31 *[(7)] (6)* In determining which grant proposals to fund within each county, the department shall:

32 (a) Consult with the committee described in subsection *[(6)] (5)* of this section;

33 (b) Give priority to those proposals that are best designed to reduce crime and drug addiction;
34 and

35 (c) Be guided by evidence-based practices, risk assessment tools or other research-based con-
36 siderations.

37 *[(8)] (7)* Nothing in this section:

38 (a) Creates any claim, right of action or civil liability; or

39 (b) Requires a supervisory authority or the Department of Corrections to provide treatment to
40 any individual under the authority's supervision or in the custody of the department.

41 *[(9)] (8)* As used in this section:

42 (a) "Drug-addicted person" means a person who has lost the ability to control the personal use
43 of controlled substances or alcohol, or who uses controlled substances or alcohol to the extent that
44 the health of the person or that of others is substantially impaired or endangered or the social or
45 economic function of the person is substantially disrupted. A drug-addicted person may be physically

1 dependent, a condition in which the body requires a continuing supply of a controlled substance or
2 alcohol to avoid characteristic withdrawal symptoms, or psychologically dependent, a condition
3 characterized by an overwhelming mental desire for continued use of a controlled substance or al-
4 cohol.

5 (b) "Intensive supervision" means the active monitoring of a person's performance in a treat-
6 ment program by a parole and probation officer and the imposition of sanctions, or request to a
7 court for sanctions, if the person fails to abide by the terms and conditions of a treatment program.

8 **SECTION 7. The amendments to ORS 137.717 and 475.933 by sections 1 and 2 of this 2011**
9 **Act apply to crimes committed on or after the effective date of this 2011 Act.**

10